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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,421	02/09/2004	Joe P. Schell	3815.00	6582

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EXAMINER

SAKRAN, VICTOR N

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 09/17/2004

Please find below and/or attached an Office-communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/773,421

Applicant(s)

SCHELL, JOE P.

Examiner

VICTOR N SAKRAN

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/9/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 2, are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson U. S. Patent No. 2,592,155 in view of Albright U. S. Patent No. 2,059,301.

Johnson disclosed the general combination claimed of a necktie holder comprising a cross bar (10) having opposed ends, a retainer member connected

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to said opposed ends of said cross bar forming an elongated loop together with said cross bar for retaining a necktie therein, wherein said retainer member defining two separate parts (21) and (17) and a flexible chain is releasably connected to the necktie holder including an ornamental plate suspended from the flexible chain; see Figures 1-3; column 2, lines 5-14, 19-21, 22-36, 43-46 and claim1, except that the reference to Johnson does not connects its flexible chain to the opposed ends of its cross bar (10). Albright teaches the use of a flexible chain which is connected to the opposed ends of its cross bar in a necktie holder; see Figure 2, and column 2, lines 12-22. It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the flexible chain in Johnson to the opposed ends of its cross bar in the manner taught, disclosed and suggested by Albright, especially, since such modification involves only routine skill in the art.

Furthermore, the particular location and/or the arrangement selected of an elements is also considered to be no more than an obvious matter of design choice to one having ordinary skill within the art, especially, since it has been held that rearranging pa an invention is involves only routine skill in the art. See In Re Japikse, 86 USPQ 70.

Claims 3 and 4, are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson U. S. Patent No. 3,319,305 in view of Albright U. S. Patent No. 2,059,301 and Johnson U. S. Patent NO. 2,592,155.

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**Anderson discloses Applicant's claimed combination of a necktie holder comprising a cross bar (16) having opposed ends, a retainer member secured to the opposed ends of the cross bar (16), said retainer member including a central portion defining an inverted V-shaped portion, wherein the central portion defining two separate parts (24) and (24A), and a pair of intermediate portions (23) and (23A) integrally formed with said central portion and extending outwardly from the bottom of said V-shaped portion including a pair of end portions formed at each end of said intermediate portions for securing said retainer member to said cross bar in combination with an ornamental brackets (19) and (19A) disposed at the cross bar (16) (Figure (2); see Figures 1-5; column 2, lines 6-15, 24-28, 39-42, and claim 1, except that the reference to Anderson does not discloses a flexible chain with an ornamental plate positioned at midpoint of the chain and connected to the opposed ends of its cross bar. Albright teaches the use of a flexible chain which is connected to the opposed ends of its cross bar in a necktie holder; see Figure 2, and column 2, lines 12-22. Johnson teaches the use of an ornamental plate (26) positioned at the midpoint of its flexible chain in a necktie holder; see Figures 1 and 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the necktie holder in Anderson with a flexible member and to be connected at each end of its cross bar including an ornamental plate and to be positioned at the midpoint of the chain in the manner taught, disclosed and suggested by Albright and Johnson, respectively, since the use of a flexible chain including an ornamental**

**plate attached to the chain in a necktie holder is conventional and well known in the art.**

**Furthermore, Applicant is reminded that in considering the disclosure of a reference, it is proper to take into account not only specific teaching of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom; see *In re Preda*, 401 F2d 825, 826, 159 USPQ 342,344 (CCPA1968).**

**Claim 5, is rejected under 35 U.S.C. 103(a) as being unpatentable over the same references as applied to claim 3, above, and further in view of Crawford U. S. Patent No. 1,784,482 (cited by Applicant) who teaches the use of a spring-type fastening clasp (17) which is connected to a chain (16) and releasably connected to a ring (21); see Figure 3; page 1, lines 60-66, and to further provide each end of the chain in Albright with a spring clasp in the manner taught, disclosed and suggested by Crawford, it would have been obvious to one having ordinary skill in the art at the time the invention was made, especially, since the use of such structure (spring clasp) is conventional and well known in the art.**

**The use of a plurality of references is justified since some of the limitations to which they are applied are independent of each other ; see *Ex Parte Fine* 1927 C. D. 84; O. G. 511**

**Claim 6, is allowable over the prior art of record.**

**The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant's attention is directed to the art cited herein, and of record, as showing structure related to Applicant's disclosed invention.**


**Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR N SAKRAN whose telephone number is 703-308-2224. The examiner can normally be reached on 6:30 AM - 5:00 PM.**

**If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. swann can be reached on 703-308-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.**

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 14, 2004

  
VICTOR N SAKRAN  
Primary Examiner  
Art Unit 3677